

Patentability of Claims 1-17 Over Feigenbaum and Maguire

Prior to discussing the Office Action and its application of the Feigenbaum and Maguire patents to the present application, a brief description of the Feigenbaum and Maguire devices is provided.

The Feigenbaum patent discloses a blanket anchor for anchoring a blanket in sand or soft earth. The blanket anchor 10 includes a rounded or convex head portion 12 and a depending stake portion 14. The stake portion 14 is offset relative to the head portion 12 for the mounting of an alligator clip or gripper jaw set generally designated by reference numeral 28.

The Maguire patent discloses a beach blanket anchor apparatus 10 comprising an anchor member 11 connected via hinge 15 to a clamp plate 14. The anchor member 11 is hollow and receives a ballast, such as sand, for anchoring a beach blanket held between the clamp plate 14 and the anchor member 11. The anchor member 11 is comprised of a base member 16 connected above the sand to a hollow cap 19 which, in the illustrated embodiment, further includes body legs 21 that project "laterally of and orthogonally relative to the spring hinge 15 and laterally of and in communication with the hollow cap 19." See Col. 3, lines 63-66, of the Maguire patent.

Turning now to the present application, disclosed is an anchoring device configured to secure a cover to the ground. The anchoring device is comprised of a body in the form of a living creature. An anchoring clamp is formed from an integral first feature and non-integral third feature, each forming first and second halves of the anchoring clamp, respectively. An integral second feature forms a stake. The first, second, and third features are all configured of natural parts or appendages of the living creature, such as the creature's mouth, arms, legs, or tail.

Claim 1, in particular, reads as follows:

An anchoring device for securing a cover to the ground, comprising:

a body in the form of a living creature having an upper end portion and a lower end portion in which the upper or lower end portions are integral with the body and located remote from each other at opposite ends of the body,

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wherein the upper end portion of the body includes an integral first feature forming a first half of an anchoring clamp, and

wherein the lower end portion of the body includes an integral second feature forming a stake, the stake being positioned at the end of the lower end portion of the body and configured to secure the body to the ground when the stake is inserted into the ground,

the anchoring device further comprising a third feature forming a second half of the anchoring clamp, in which the third feature is not integral with the body but engages the body at a position opposite the first half of the anchoring clamp, the first and second halves of the anchoring clamp cooperating to secure a cover to the body, and

wherein the first and third features forming the anchoring clamp and the second feature forming the stake are configured of natural parts or appendages of the living creature.

The Office Action acknowledges that the blanket anchor disclosed by Feigenbaum is deficient relative to the invention claimed in the present application. Specifically, the Office Action acknowledges that the elements of the blanket anchor disclosed by Feigenbaum are not formed from a living creature. Nevertheless, the Office Action alleges that a combination of the Maguire patent and the Feigenbaum patent renders the claimed invention obvious. Applicant strongly disagrees.

All of the elements of the blanket anchor disclosed by Maguire are configured for use above ground. In particular, the base member 16 projects upward from the base floor 13. The hollow cap 19, which detachably connects to the base member 16, continues upward and projects laterally with legs 21. Important to note is that the configuration of the legs 21 is essential to the operation of the blanket anchor disclosed by Maguire. The legs 21 are specifically configured to provide leverage for rotating the base member 16 apart from the clamp plate 14. The legs 21 may also be resiliently biased toward one another to receive a pole member 23, as illustrated in

Figure 5 of Maguire. For the legs 21 to function in this fashion, it is necessary that they extend upward and away from the base member 16.

At best, a combination of Maguire's apparatus with the blanket anchor of Feigenbaum would result in a blanket anchor in which Feigenbaum's head portion 12 is replaced by the base member 16, hollow cap 19, and legs 21 of Maguire. Again, all of these elements of the anchor apparatus extend upward away from the ground.

In stark contrast, the anchoring device claimed in Claim 1 of the present application has a lower end portion that "includes an integral second feature forming a stake, the stake being positioned at the end of the lower end portion of the body and configured to secure the body to the ground when the stake is inserted into the ground." Furthermore, "the second feature forming the stake [is] configured of natural parts or appendages of the living creature" that form the body of the anchoring device.

The disclosure of Maguire does not teach or suggest the desirability of forming a stake from a natural part or appendage of a living creature. Rather, the Maguire disclosure teaches away from such a configuration. As noted earlier, Maguire discloses the use of legs 21 that extend upward and laterally away from the base member 16 to provide leverage for opening the clamp, and further to possibly secure a pole above the ground.

The U.S. Court of Appeals for the Federal Circuit has repeatedly warned against using a patent applicant's disclosure as a blueprint for piecing together patent references and rejecting claims based on obviousness. In the present case, only in applicant's disclosure is there a suggestion to use a natural part or appendage of a living creature, such as a tail or legs of a creature, to form a stake that is "configured to secure the body to the ground when the stake is inserted into the ground." It would be contrary to the teachings of Maguire to adapt the legs 21 for insertion into the ground as they would cease to function for providing leverage for opening the device or as a pole holding means, as specifically taught by Maguire. Federal circuit case law is also replete with instances in which a *prima facie* case of obviousness is not found where

modifications required to apply the teachings of a reference render the disclosed apparatus inoperable. Great care must be taken to consider the combination of Maguire and Feigenbaum separate from the present application. *Without the benefit of applicant's disclosure*, it would not have been obvious to a person of ordinary skill in the art at the time the present application was filed to create a modified combination of Maguire and Feigenbaum and achieve the present invention.

Moreover, neither Feigenbaum nor Maguire teach that both the first and second halves of the anchoring clamp are configured of natural parts or appendages of a living creature. At best, Maguire teaches only the attachment of a body portion to a top half of a clamp. The bottom half of the clamp taught throughout Maguire is comprised of a flat clamp plate 14. In contrast, the present invention teaches and claims both "the first and third features forming the anchoring clamp" as "configured of natural parts or appendages of the living creature." See Claim 1 above.

In view of the foregoing, applicant strenuously submits that the present invention, as claimed in Claim 1, is patentable over the Feigenbaum and Maguire references. Reconsideration of the application and allowance of Claim 1 is respectfully requested.

Claims 2-20 are also patentable over the prior art for their dependence on allowable Claim 1 and for the additional subject matter recited therein. For example, the application includes dependent claims that further define the features forming the anchoring clamp and the stake as being configured of natural parts or appendages of the living creature, which is not found in Maguire or Feigenbaum.

Patentability of Claims 18-20 over Feigenbaum, Maguire, and Griffiths et al.

Applicant respectfully submits that Claims 18-20 are also patentable over the cited art, both for their dependence on allowable Claim 1 and for the additional subject matter recited therein. Applicant has carefully considered the disclosure of Griffiths et al. and finds nothing that cures the deficiencies of the Feigenbaum and Maguire patents discussed above relative to Claims 1-17. Configuring the stake in two or more parts that form separate stakes, as further

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claimed in Claim 19, is not disclosed by Griffiths et al. Applicant respectfully requests reconsideration and allowance of Claims 18-20.

CONCLUSION

Applicant has reviewed the prior art and firmly believes that a *prima facie* case of obviousness cannot be properly found from a combination of the disclosures of Feigenbaum, Maguire, and/or Griffiths et al. When the prior art is considered at the time the present application was filed, without the benefit of the present disclosure, it is evident that one of ordinary skill in the art would not have found it obvious to modify the Feigenbaum, Maguire, and/or Griffiths et al. patents to achieve the invention claimed in the present application. Accordingly, applicant respectfully requests withdrawal of the rejection of Claims 1-20 and the allowance of the present application at an early date. Should the Examiner have any questions or comments that can be addressed by telephone, the Examiner is invited to contact applicant's attorney at the telephone number indicated below.

Respectfully submitted,

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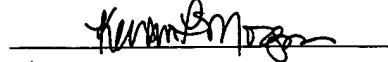


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